



# National Transportation Safety Board

Washington, D.C. 20594

Office of General Counsel

NOV 1 2013

## BY U.S. MAIL AND ELECTRONIC MAIL

Mr. Robert S. Hulick  
Executive Vice President  
Trinity Industries Leasing Company  
2525 Stemmons Freeway  
Dallas, Texas 75207

PII Redacted

Re: Train derailment and hazardous-materials release near Paulsboro, N.J., on  
November 30, 2012; National Transportation Safety Board (NTSB) Accident  
No. DCA13MR002

Dear Mr. Hulick:

The NTSB values TrinityRail's participation as a party in the NTSB's ongoing investigation of the above-referenced accident. In the interest of providing for TrinityRail's continued participation, I write to confirm the agreement reached during a telephone conversation on October 31, 2013, between you, investigator-in-charge Paul Stancil, and attorney Alex Burkett of my office that TrinityRail will designate Mr. A.D. McKisic as party representative for the remainder of the investigation. Mr. McKisic will replace Mr. James Bogusky in that capacity.

As you know, the NTSB's party process incorporates specific safeguards to ensure strict separation between NTSB investigations and any parallel civil litigation regarding an accident. The NTSB's "Information and Guidance for Parties to NTSB Accident and Incident Investigations" states that "[p]ersons . . . pursuing litigation interests . . . are not permitted to be involved in an NTSB investigation." The guidance states that party status "is a privilege and confers no rights or benefits."

We have recently learned that Mr. Bogusky, in his personal capacity, is pursuing one or more claims for personal injury or loss arising from the accident under investigation. The pendency of these legal claims presents a conflict of interest with respect to his continued service as party representative and is contrary to the NTSB requirement quoted above. We appreciate your agreement, which you indicated in the telephone call with NTSB staff, to designate Mr. McKisic as party representative in Mr. Bogusky's place. Mr. Stancil has provided you with a Certification of Party Representative form, which we request that Mr. McKisic sign and return to Mr. Stancil at his earliest convenience.

By way of separate letter to Mr. Bogusky, we have reminded him that all restrictions on his use and disclosure of any non-public information he learned through his participation in the NTSB investigation will continue to apply, pending publication of a Board report on the accident and conclusion of the NTSB's investigation. *See* 49 C.F.R. § 831.13(b). Until that time, Mr. Bogusky may not use or disclose any investigative information, for purposes of his legal action or otherwise, without the explicit authorization of the investigator in charge.

If you have any questions of a legal nature about the decision we have taken, please feel free to contact Mr. Burkett at (202) PII [REDACTED]. Otherwise, please feel free to contact Mr. Stancil at (202) PII [REDACTED] to discuss any other matters related to the investigation. We are placing a copy of this letter in the public docket for the NTSB investigation.

Thank you for your understanding and cooperation. We look forward to continuing to work productively with TrinityRail as this investigation moves forward.

Sincerely,

PII Redacted [REDACTED]

Ann G. Gawalt  
Deputy General Counsel